

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

Yingying Dai and Carole Luk,

Case No.:
1:18-cv-05170-AMD-RLM

Plaintiffs,

-against-

**ABNS NY INC., d/b/a Carvel, SHK LI INC.,
d/b/a Carvel and Ka Shek Tam,**

Defendants.

**DEFENDANTS' MOTION IN LIMINE TO PRECLUDE PLAINTIFFS FROM
PRESENTING EVIDENCE REGARDING DEFENDANTS' COUNTERCLAIM**

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Dated: New York, New York
October 15, 2019

Defendants, through their attorneys, respectfully submit this memorandum of law in support of their motion *in limine* precluding the plaintiffs from introducing evidence related to the defendants' counterclaim.

FACTS

Plaintiffs commenced this action on September 13, 2018 by filing a Summons and Complaint with the Court. On October 13, 2018, defendants filed an Answer with Counterclaim with the Court. To date, plaintiffs have not filed an Answer to the defendants' Counterclaim.

ARGUMENT

- I. All allegations in the defendants' counter claim should be deemed admitted and plaintiff should not be permitted to illicit evidence related to the Counterclaim.**

Rule 12 (a)(1)(B) of the Federal Rules of Civil Procedure states that:

a party must serve an answer to a counterclaim ... within 21 days after being served with the pleading that states a counterclaim.

Rule 8 (b)(6) of the Federal Rules of Civil Procedure states that:

an allegation ... is admitted if a responsive pleading is required and the allegation is not denied.

Plaintiffs have failed to provide a response to the defendants' counterclaim; therefore, the allegations should be deemed admitted.

CONCLUSION

For the foregoing reasons, the Court should preclude the plaintiffs from admitting evidence at trial denying the allegations in the defendants' counterclaim.

Dated: New York, New York
October 15, 2019

Respectfully submitted,



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